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N.J. BOARD OF DENTISTRY  
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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY

In the Matter of )  
 )  
JOHN KIRKOWSKI, D.M.D. )  
License No. 8490 )  
 )  
Licensed to Practice )  
Dentistry in the State )  
of New Jersey )

FINAL ORDER OF DISCIPLINE

CERTIFIED TRUE COPY

This matter was opened to the Board of Dentistry ("Board") on information received from the Division of Criminal Justice, Office of the Insurance Fraud Prosecutor ("OIFP"). OIFP provided the Board with a copy of a consent order signed by John A. Kirkowski, D.M.D. ("respondent") in March 1999, in which respondent agreed to pay a civil penalty of \$3,000 for misrepresenting a treatment date on an insurance claim form (consent order attached as Exhibit A). Based on the OIFP action, the Board preliminarily found grounds for disciplinary action. It entered a Provisional Order of Discipline on July 21, 1999. Pursuant to the terms of the Provisional Order, respondent's license to practice dentistry was to be suspended for a period of two years, of which sixty days was to be served as an active suspension. That Provisional Order permitted respondent to provide to the Board a written submission seeking modification or dismissal of the Provisional Order.

Respondent wrote to the Board seeking modification of the terms of the proposed discipline. In an undated letter, respondent apologized for his actions. He relayed that he had reimbursed the insurance company "close to \$3,000" prior to the involvement of the

Insurance Fraud Prosecutor. Subsequently, following his cooperation with the investigation of the Insurance Fraud Prosecutor, he was assessed a civil penalty of \$3,000 by that agency. He asserted that a 60 day active suspension would be devastating to him, his family, whom he solely supports, and the patient population in his community where he provides services to Medicaid patients, group homes, and Willow Glen Academy. He asked further that the Board consider eliminating the audit requirement as he is currently paying for audits of his practice performed by an insurance company. In lieu of the suspension, respondent sought an order for community service or a "small fine" payable over a period of time.

The deputy attorney general representing the Board responded to the submission advising the Board that respondent had not disputed the underlying basis for disciplinary action and that the Board could therefore enter a final order. The deputy further advised that, notwithstanding the mitigating information presented, it was within the Board's prerogative to sustain its provisional order of discipline. The Board was also free to reduce the active period of suspension or to stay the suspension entirely, considering that period one of probation during which random audits could be conducted.

At its meeting on October 6, 1999, the Board reviewed respondent's submission and the deputy's response. It now makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

1. Respondent has been a licensee of the Board at all relevant times.

2. On March 4, 1999, respondent entered into a Consent Order with the OIFP agreeing to pay a civil penalty in the amount of \$3,000.00 upon a finding that he misrepresented an actual treatment date on an insurance submission in order to bypass the annual maximum benefit allowable pursuant to patient M.K.'s insurance plan which would constitute a violation of N.J.S.A. 17:33A-1 et seq.

3. Respondent's conduct in submitting an inaccurate insurance claim form was a single incident occurring in 1995. Respondent has made restitution to the insurance company and has paid a civil penalty of \$3,000 based on a violation of N.J.S.A. 17:33A-1 et seq.

4. Respondent has shown remorse for his action.

### CONCLUSIONS OF LAW

Respondent's conduct as conclusively established by the OIFP Consent Order provides grounds for discipline in that it constitutes an act of dishonesty, fraud, deception and misrepresentation in violation of N.J.S.A. 45:1-21(b) and an act of professional misconduct in violation of N.J.S.A. 45:1-21(e). The costs associated with such conduct include higher insurance premiums and diminished respect for the profession. The Board does not treat lightly those licensees who choose to submit false claims to an insurance company, even when the beneficiary of the submission may include the patient.

Notwithstanding that conclusion, the Board is persuaded that respondent's action was not part of a larger scheme to defraud and that he has been sanctioned for his misconduct through the imposition of a penalty by the OIFP and by his payment of restitution to the insurance company. The Board will suspend respondent's license for two years but will stay the entire suspension, which will be served as a period of probation. If at any time during the period of probation respondent is found to have engaged in any conduct implicating fraud, respondent shall, in addition to any other penalty the Board may impose for that conduct, serve the entire two year suspension. During the period of probation, respondent shall be subject to random audits at his expense.

The Board is satisfied that, in light of all information presented in this case, this order of discipline adequately protects the interests of the public. This order should not be viewed as an indication that the Board will not impose an active suspension in matters where even one violation of the law of this State is proven. Therefore,

IT IS on this 3d day of November, 1999,

ORDERED that:

1. The license of John Kirkowski, D.M.D. to practice dentistry in the State of New Jersey is hereby suspended for a period of two (2) years, which suspension shall be stayed and served as a period of probation.

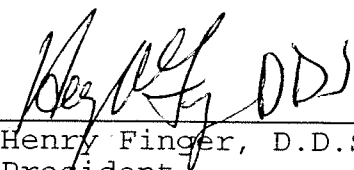
2. If, during the period of probation, respondent is found to have engaged in any conduct involving fraud in connection

with the submission of insurance claim forms or to have violated any law in this State relating to insurance, the entire stayed suspension shall become active. That suspension shall be in addition to any other penalty imposed by the Board related to the conduct.

3. During the period of probation, respondent shall submit to random audits by the Enforcement Bureau of his patient and billing records as they relate to his requests for insurance reimbursement. These audits shall be conducted at respondent's expense.

NEW JERSEY STATE BOARD OF DENTISTRY

By: \_\_\_\_\_

  
Henry Finger, D.D.S.  
President